

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P. No.464 of 2006.

Judgment reserved on:21.12.2006.

Date of decision: 29.12.2006

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Dhruv Singh Jamwal

.....Petitioner

-Versus-

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State of H.P. and others

....Respondents

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Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Petitioner: Mr.Kuldip Singh Kanwar, Senior Advocate  
with Mr.K.S.Kanwar, Advocate.

For Respondents: Mr.M.S.Chandel,A.G. with Mr.R.M.Bisht,  
Dy.A.G. for respondents 1 to 3.  
Mr.Shrawan Dogra, counsel for R-4.  
Mr.Sunil Mohan Goel, counsel for R-5.

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**Deepak Gupta, J.**

By means of this writ petition the petitioner has laid challenge to the order dated 24.1.2002/5.2.2002 whereby the Collector, Kullu (respondent No.2 herein) has sanctioned and granted approval to exchange of 4 biswas of land situated in khasra No.610/1/1 in Phatti Dhalpur, Kothi Maharaja Kullu in favour of respondent No.5 in exchange of 4 biswas of land comprised in khasra No.2302/1813/1 in Phatti Balh, Kullu.

Admitted facts of the case are that 4 biswas of land belonging to the respondent No.5 in Gandhi Nagar, Kullu being part of khasra

No.2302/1813 was utilized by the Municipal Council, Kullu for raising some construction. From the pleadings of the parties it is however not clear as to when this construction was raised by the Municipal Council on the land of respondent No.5 but it appears that the said construction was raised some times in the 1980's.

The respondent No.5 thereafter applied for granting him some land in exchange of his land which had been utilized by the Municipal Council. The Municipal Council, Kullu consented to the exchange vide Resolution No.14 dated 23.3.2001. Thereafter, the Collector passed the impugned order whereby he permitted the exchange and has granted 4 biswas of land in khasra No.610/1/1 to the respondent No.5.

The petitioner alleges that he has filed this petition in the public interest. According to him neither he nor the residents of the area were aware about this exchange. He further submits that at the time when the Municipal Council issued no objection to the exchange the brother of the respondent No.5 was the Vice-President of the Municipal Council, Kullu and is presently the President. This fact is not denied by the respondents. According to the petitioner there were some toilets which were existing on a part of khasra No.610/1. These toilets were demolished in September, 2005. It was not clear who had demolished these toilets and therefore a public body known as the Jagrook Nagrik Sabha Dhalpur sent a letter to respondent No.2 that the toilets had been demolished by some mischievous persons and the same may be got reconstructed.

Thereafter, in May, 2006 the respondent No.5 started levelling part of khasra No.610/1 and the local residents objected to the same by sending a representation to the respondent No.2 on 16.5.2006 with copies to various persons and authorities. Since the respondent did not desist from the construction the petition has been filed in public interest.

The case of the petitioner is that the respondent No.2 had no authority or jurisdiction to grant exchange or sanction the exchange in favour of respondent No.5.

The petition has been contested by the respondents. Respondents 1&2 in their reply have submitted that the Collector has granted the exchange in exercise of the powers vested in him under Para 8.67(4) of the H.P. Land Record Manual, 1992. Reliance has also been placed on Section 57 of the Municipal Act.

Respondent No.5 has raised objection to the maintainability of the petition itself and has submitted that the petition has not been filed in the public interest but to wreak out personal vengeance and therefore the same should be dismissed at the threshold. In the alternative respondent No.5 has justified the grant of land in his favour.

We have heard Sh.Kuldip Singh, learned Senior Counsel for the petitioner, Shri M.S.Chandel, learned Advocate General for respondents 1 to 3, Sh.Shrawan Dogra, learned counsel for respondent No.4 and Shri Ajay Goel, learned counsel for respondent No.5.

We shall first deal with the contention of Sh.Goel that the petition should not be entertained in view of the fact that the same is not in the public interest and also that the same is barred by delay and laches. Sh.Ajay Mohan Goel has relied upon the judgment of the Apex Court in **R & M Trust vs. Koramangala Residents Vigilance Group and others, (2005) 3 SCC 91**. The relevant portions of the judgment read as follows:

“23.Next question is whether such public interest litigation should at all be entertained and laches thereon. This sacrosanct jurisdiction of public interest litigation should be invoked very sparingly and in favour of vigilant litigant and not for the persons who invoke this jurisdiction for the sake of publicity or for the purpose of serving their private ends.

24.Public interest litigation is no doubt a very useful handle for redressing the grievances of the people but unfortunately lately it has been abused by some interested persons and it has brought a very bad name. Courts should be very very slow in entertaining petitions involving public interest: in very rare cases where the public at large stand to suffer. This jurisdiction is meant for the purpose of coming to the rescue of the downtrodden and not for the purpose of serving private ends. It has now become common for unscrupulous people to serve their private ends and jeopardize the rights of innocent people so as to wreak vengeance for their personal ends. This has become very handy to the developers and in matters of public contracts. In order to serve their professional rivalry they utilize the service of the innocent people or organization in filing public interest litigation. The courts are sometimes persuaded to issue certain directions without understanding the implications and giving a handle in the hands of the authorities to misuse it. Therefore, the courts should not exercise this

jurisdiction lightly but should exercise in very rare and few cases involving public interest of a large number of people who cannot afford litigation and are made to suffer at the hands of the authorities...”

As regards the limitation the Apex Court held as follows:

“34. There is no doubt that delay is a very important factor while exercising extraordinary jurisdiction under Article 226 of the Constitution. We cannot disturb the third-party interest created on account of delay. Even otherwise also why should the Court come to the rescue of a person who is not vigilant of his rights?”

We have given our careful consideration to this judgment and we find that the same is not at all applicable to the facts of the present case. As far as delay is concerned in the present case neither the petitioner nor any other member of the public could have been aware about the order passed in 2002 in favour of respondent No.5. As soon as the toilets were removed representation Annexure P-1 was made to the respondent No.2 with copies to various authorities. In this they had requested that the Municipal Council, Kullu be directed to reconstruct the toilets. The construction by respondent No.5 started some time in May, 2006 and immediately thereafter a large number of members of the public sent the representation Annexure P-2. The petitioner is not a signatory to the said representation. He however moved this Court and filed the present writ petition on 2.6.2006 itself. This Court vide its order dated 7.6.2006 had directed that the parties shall maintain status quo with regard to the construction activity upon the land by respondent No.5. The respondent No.5 in his reply has stated that he had already

raised 17 pillars. The petitioner with the rejoinder has attached some photographs which show that other than the retaining wall and pillars no other construction has been raised. This work could have been done within one month and therefore the contention of Sh.Ajay Goel that the petition should be rejected on the ground of delay and laches is rejected.

As far as public interest is concerned, we are of the considered view that in the present case public interest is involved. A person who happens to be the brother of the Vice-President of the Municipal Council (now admittedly the President) is granted land in exchange of certain other land utilized by the Council many years ago. Why was the land owner silent for so many years? Why was the application for exchange only filed when the brother of the respondent No.5 was holding a senior post in the Municipal Council and he could influence the outcome of the matter? These questions are very important. Even more important is the fact that public property must be dealt with in a transparent manner. No official of the State has the power to exchange or in any way alienate the land of the State without following the procedure prescribed by law.

The petitioner has submitted that the exchange is in total violation of the instructions issued by the State Government by notification dated 24<sup>th</sup> August, 1987 whereby exchange of Government land under Rule 27 of the H.P. Nautor Rules has been banned in all cases. It has however been stated in the notification that if special circumstances are made out the exchange would be

allowed with the prior approval of the State Government. This notification may not strictly apply since these instructions have been issued under the Nautor rules.

We had put pointed queries to the respondents as to under what powers the Collector had granted the exchange. The only answer in the reply is that the exchange has been granted in terms of sub-para 4 of para 8.67 of the Land Administration Manual. Para 8.67 deals with the land owned by the Government and basically relates to the manner in which entries relating to the Government owned land should be entered in the revenue record. Sub para (4) reads as follows:

**“8.67.** All land owned by Government should be entered in one place after the village common land. All land permanently appropriated for public purposes since the date of the last settlement should be entered thus:

(1) to (3) xxxxxx

(4) When nazul or other Government property is vested in a local body, or is otherwise in its possession such property should be described as “State Government or Central Government” as the case may be, “maqbuza M.C., or Municipal Corporation, or Cantonment Board” as the case may be. But property acquired by a local body should be shown as owned by that body. In order to guard the interests of Government, no mutation of any new acquisition or of sale of property owned by a local body should be made without the order of the collector.”

A perusal of this sub para does not show that the Collector has any power of authority to alienate the land of the Government. All it provides is that whenever land of the Government which is vested in

it or in possession of a local body such as Municipal Council is acquired or sold the mutation in respect thereof cannot be made without the order of the Collector.

Reliance placed by the respondents on Section 57 of the H.P. Municipal Act, 1994 is also totally misconceived. The land in question admittedly does not vest in the municipality. Clause (f) of sub-section (1) of Section 57 reads as follows:

“57(1) Subject to any special reservation made or to any special conditions imposed by the State Government, all property of the nature hereinafter in this section specified and situated within the municipal area, shall vest in and be under the control of the municipality and with all other property which has already vested, or may hereafter vest in the municipality shall be held and applied by it for the purpose of this Act, that is to say:

(a) to (e) xxxxxxxx

(f) all land or other property transferred to the municipality by the State government or acquired by gift, purchase or otherwise for local public purposes.”

A perusal of this sub-section clearly shows that only that land would be deemed to be vested in the municipality which has been transferred to it by the State Government. In the present case no order has been placed before us to show that the land in question was ever transferred by the State Government in favour of the Municipal Council, Kullu. In fact the revenue record and the impugned order itself show that the said land continues to be in the name of the provincial Government.

As a last resort, reliance has been placed by the respondents upon the H.P. Municipal Property Rules, 1971. These Rules were framed prior to the enactment of the H.P. Municipal Act, 1994. The Rules were framed under the powers vested under the H.P. Municipal Act, 1968. It is doubtful whether the Rules continue to remain in operation after the repeal of the previous Act. However, even if these Rules are held to be valid the respondents cannot derive benefit thereunder because Rule 6 clearly states that no municipality shall sell nazul land or the properties of the Government in its charge without previous sanction of the Government.

On an overall examination of the entire case, we find that the respondent No.2 had no authority or jurisdiction to pass the order dated 24.1.2002/5.2.2002 sanctioning the exchange and granting khasra No.610/1/1 in favour of respondent No.5. The writ petition is allowed and the said order is, therefore, quashed with all its consequences. The respondent No.5 shall handover possession of land comprised in khasra No.610/1/1 to the respondent No.4 forthwith.

Before parting with the case we may observe that the Municipal Council and the State admit that the Municipal Council has utilized some land of the respondent No.5 for raising shops and toilets in Gandhi Nagar and the respondent No.5 has not been paid any compensation for the said land. The respondent No.5 shall be at liberty to approach the appropriate authority for payment of

compensation either in cash or by way of exchange of land. The request of the respondent No.5 shall be considered, if made within four weeks from today, and shall be processed and considered in accordance with law by the respondents 1,2 and 4 and disposed of within 3 months thereafter. Thereafter, any of the aggrieved party shall be at liberty to approach the Court.

The writ petition is disposed of with the aforesaid directions. Civil miscellaneous application is also disposed of. No costs.

**( Deepak Gupta ),**  
**Judge**

December 29, 2006.  
PV

**( Surinder Singh ),**  
**Judge**